

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5193 of 2016 (O&M)
Date of decision:21.09.2016

Gurminder Kaur

... Petitioner

Vs.

Sunil Kumar Gupta

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjeev Sharma, Advocate
for the petitioner.

Mr. Aditya Jain, Advocate and
Mr. Raj Shekhar, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Petitioner – landlady is aggrieved of the impugned orders Annexures P-15, P-16, P-17, P-18 and P-19, whereby, the following occasions have arose:-

- i) The application of the respondent-tenant has been entertained and the issues have been framed thereon.
- ii) The execution application of the landlady has been adjourned sine die.
- iii) The application for recalling of warrant of possession has also been allowed, in view of the framing of the issues in the application.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of the petitioner-landlady submits that prior to the present round of litigation,

under compelling circumstances as the respondent-tenant had stopped paying the arrears of rent w.e.f. 01.11.2010, eviction petition was filed for claiming the arrears on the premise that in the year 2006, an eviction petition on the ground of personal necessity was instituted including the ground of non-payment of rent.

During the aforementioned proceedings, the tenant paid the arrears of rent but thereafter, as noticed above, stopped paying the same. In the main eviction petition, the petitioner-landlady had already concluded evidence but the respondent's witnesses are not appearing for cross examination. He further submits that the present eviction petition was filed on 23.05.2014 and tenant intentionally and willfully was proceeded against ex parte on 18.03.2015 and ultimately, on an application moved, the ex parte proceedings were set aside and the matter was listed for filing the written statement on 03.11.2015 and finally on 06.01.2016, the trial Court in pursuance to the ratio decidendi culled out by the Hon'ble Supreme Court in **Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation 2002(1) RCR (Rent) 514**, assessed the provisional rent, whereby, the respondent-tenant was called upon to tender the rent on 11.02.2016. Neither the respondent nor his counsel had appeared nor the rent was tendered. The Rent Controller having left with no other option, passed the eviction order. The aforementioned eviction order though is appealable under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 within a period of 15 days from the preparation of certified copy of the order. Having not availed that remedy, the application for recalling of the order by invoking the

provisions of Order 9 Rule 13 of Code of Civil Procedure (hereinafter referred to as “CPC”) was moved on 16.05.2016.

During the interregnum, the petitioner had moved an application for execution of the judgment and decree and warrant of possession has been issued but the same remained un-executable for one reason or the another. At this stage, the application aforementioned had been moved. The intention of the tenant is not bonafide, but an attempt to prolong the agony and adjudication of the lis. The conduct of the tenant shows that he has left no stone un-turned for tiring out petitioner who is a landlady having sought the ejectment on the ground of personal necessity stated to be pending adjudication.

He further submits that no doubt, the provisions of the Code of Civil Procedure do not apply *mutatis mutandis* but the principles carved out therein would be as per the ratio decidendi culled out by the Hon'ble Division Bench of this Court rendered in **Mehtab Singh vs. Tilak Raj Arora and another ILR Punjab and Haryana 1988 (2) 50**. The application entertained by the Rent Controller was purportedly under Order 9 Rule 13 CPC but the fact remains that eviction order does not indicate that respondent was proceeded against ex parte. The order is perfectly in consonance with the directions contained in Rakesh Wadhawan's case (supra) and thus, urges this Court for setting aside the orders under challenge.

Per contra, Mr. Aditya Jain, Advocate and Mr. Raj Shekhar,

Advocates appearing on behalf of the respondent-tenant submits that no doubt, the Rent Controller while framing the issues on the application at the behest of the tenant had given 2 effective opportunities to lead evidence but did not impose any condition for payment of rent. On instructions from his client, he submits that he is willing to pay the entire arrears of rent before rising of Court. He further submits that the eviction order in the absence of the tenant would tantamount to be an ex parte order, for, even in a ordinary civil suit, in case the respondent does not file the written statement, consequential effect would be of passing of the decree as per the provisions of Order 8 Rule 10 CPC.

He further submits that the respondent was suffering from ailment and was under going dialysis and acquired the knowledge of the ejectment order dated 11.02.2016 when the bailiff of the Court visited premises in dispute for taking over the possession of the premises, which is commercial one and only source of livelihood.

In support of his aforementioned contentions, he relies upon the judgment of the Hon'ble Delhi Court in **Apollo International Limited vs. Supriya Pharmaceuticals Limited 2016 (2) Civil Court Cases 324**, wherein, identical argument at the behest of the decree holder was raised but the same was repelled and it was held that even if the judgment and decree is passed as per the provisions of Order 8 Rule 10 CPC, it would be an ex parte decree, therefore, the application under Order 9 Rule 13 CPC would be maintainable. As per the facts of the case as noticed, the application

was/is maintainable and the Court had no occasion but to proceed further in accordance with law, though it was accompanied by an application seeking condonation of delay and issue regarding the same had also been framed and thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that the ratio decidendi culled out by the Hon'ble Supreme Court in Rakesh Wadhawan's case (supra) squarely apply to the facts and circumstances of the present case as the Rent Controller had in letter and spirit complied the same, in essence, the ratio decidendi culled out in judgment cited is no longer res integra.

The Rent Controller is enjoined upon an obligation to pass the aforementioned eviction order. The said eviction order as per the provisions of Section 15 of 1949 Act, is appealable and it can be filed within a period of 15 days. However, the present application has been filed on 16.05.2016. The tenant knew that the appeal would be accompanied by an application seeking condonation of delay and would not be able to get stay and adopted normal method of filing an application under Order 9 Rule 13 CPC.

In my view, the eviction order is not an ex parte as no explanation has come forth why the counsel had not appeared or even the request was not made before the Court below for all three months. I am only taking judicial notice of the fact that petitioner has already filed the eviction petition on the ground of personal necessity in the year 2006 which is still pending for the respondent's evidence but would not refrain myself in commenting upon the conduct of the tenant, who apparently bent upon in

tiring out the petitioner by adopting such tactics. Inasmuch as that in the present eviction petition, he was proceeded against ex parte and thereafter, moved an application which was not objected to and filed written statement and on assessment of provisional rent, did not offer to pay the same. The present situation would not have arisen, had the tenant continued to pay the rent in the earlier instituted eviction petition.

For the sake of brevity, the directions contained in Rakesh Wadhawan's case (supra) read thus:-

“To sum up, our conclusions are:

- 1. In [Section 13\(2\)](#) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.*
- 2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.*
- 3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by*

Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the

pendency of the proceedings.”

In my view, the trial Court ought not to have accepted the application even by putting terms and conditions as a valuable right has accrued in favour of the landlady and accepting the rent at this stage, would amount to losing her right, as no sane person would do in the present situation.

In my view, the application was not maintainable as the eviction order cannot be said to be an ex parte. The remedy, if any, was to file an appeal as explanation given under Order 9 Rule 13 CPC would not be attracted which enables the effected party to avail either of the remedies.

For the aforementioned reasons, the aforementioned orders under challenge are hereby set aside and the order dated 11.02.2016 is restored. The petitioner-landlady is at liberty to seek execution of the judgment and decree in accordance with law.

Civil Revision stands allowed.

(AMIT RAWAL)
JUDGE

September 21, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No